BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

NOEL LYONS Claimant VS. **SOUTHWESTERN BELL TELEPHONE** Respondent Self-Insured	)	Docket No. 184,807

ORDER

Claimant requests review of Administrative Law Judge Floyd V. Palmer's Award entered in this proceeding on June 1, 1995. The Appeals Board heard oral argument on October 2, 1995.

APPEARANCES

Claimant appeared by his attorney, Judy A. Pope of Topeka, Kansas. The respondent appeared by its attorney, Michael C. Cavell of Topeka, Kansas. There were no other appearances.

RECORD & STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge denied claimant's request for benefits on the basis that claimant failed to prove he sustained an accidental injury compensable under the Workers Compensation Act. The claimant requested review of that finding. That is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds:

Claimant has sustained personal injury by accident arising out of and in the course of his employment with the respondent for which he is entitled benefits under the Workers Compensation Act. Therefore, this case should be remanded to the Administrative Law Judge for determination of the remaining issues.

Claimant alleges he sustained a work-related injury, compensable under the Workers Compensation Act as a result of a series of trauma between October 1962 and May 1992. Claimant worked for the respondent as a lineman, switchman, telephone installer and cable repairman for thirty (30) years and throughout his career performed heavy lifting and repetitive bending, stooping and twisting. Soon after he began working for the respondent, claimant began to experience problems with his neck and back. In approximately 1973, claimant sustained a work-related injury to his right shoulder and received surgery. In approximately 1974, claimant was pinned between his line truck and a telephone pole and, thereafter, wore a back brace for approximately one (1) year. In 1980, claimant underwent a hernia operation and in 1981 missed work due to what he described as a bulging disc syndrome. In April 1985, claimant was again injured at work, received surgery and missed work for six (6) or seven (7) weeks. Over the years, claimant's back progressively worsened and in May, 1992 he was advised by his physician to stop working. Despite having other work-related injuries, this is claimant's first workers compensation claim.

As a lineman,claimant performed heavy manual labor as he was required to set poles, install crossarms weighing approximately one hundred eighty (180) pounds, help lift twenty-five (25) foot poles weighing six hundred (600) pounds, climb poles, dig holes, and lift manhole covers weighing between one hundred fifty and three hundred (150-300) pounds. As a telephone installer, claimant performed strenuous physical labor but was not required to do as much heavy lifting. Claimant primarily dropped lines and installed telephones. As a switchman, claimant worked in one of respondent's central offices and maintained equipment. In this position, heavy lifting was primarily limited to handling heavy nitrogen bottles. However, claimant was required to repetitively bend and stoop to perform this job. Claimant's other position with the respondent was cable repairman. Although this job did not generally require the heavy lifting of the lineman, claimant still lifted heavy air bottles and manhole covers, and was also required to frequently bend and stoop. Some of the cable that claimant handled and lifted was four (4) inches in diameter with sleeves weighing as much as one hundred fifty (150) pounds. Although not officially classified as a lineman when he was working in these other positions, claimant would perform the lineman duties in emergencies.

At respondent's referral in October 1992 claimant first saw board-certified orthopedic surgeon Chris Maeda, M.D. Dr. Maeda obtained a history that claimant had experienced intermittent back pain for twenty-five (25) years with his symptoms worsening since about January 1992. After reviewing various studies, including a myelogram and lumbar CT scan with dye, Dr. Maeda diagnosed severe spinal lumbar stenosis at the L3-4, L4-5, and L5-S1 intervertebral levels, degenerative disc disease at the same three (3) intervertebral levels, and facet joint arthritis. In December 1992, Dr. Maeda performed surgery on claimant's lumbar spine to fuse the vertebra. Unfortunately, it appears the fusion was not successful and claimant may need to be re-operated. The doctor believes claimant has a thirty-five percent (35%) functional impairment to the body as a whole as a result of his medical condition, according to the AMA Guides, and should permanently avoid repetitive lifting, repetitive bending, and never lift more than twenty (20) pounds. Dr. Maeda testified claimant's spinal stenosis, degenerative disc disease and facet joint arthritis was the result of wear and tear on the spine caused by multiple factors such as physical labor, age, genetics and body weight. Ranking the various factors in order of causation, Dr. Maeda testified claimant's thirty (30) years of physical manual labor ranked first.

Kansas law is well established that a series of traumas resulting in injury is a compensable accident. See Downes v IBP, Inc., 10 Kan. App. 2d 39, 691 P.2d 42 (1984) and Winkelman v Boeing Airplane Co., 166 Kan. 503, 203 P.2d 171 (1949). The respondent argues claimant is not entitled to workers compensation benefits based upon the case of Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972). Respondent's reliance upon that case is misplaced. Boeckmann is distinguishable

from the facts now before us. In Boeckmann, the employee, Adolph H. Boeckmann, was a tire inspector and suffered from degenerative arthritis of the hips. The physicians testified Mr. Boeckmann's disease process would have continued to worsen whether he was working or not, and would progress even if he were in a wheelchair. The Court found that Mr. Boeckmann had failed to establish a causal connection between his worsening arthritic condition and his employment. Unlike Boeckmann, in the case now before us claimant performed strenuous physical labor for the respondent and has established, through the testimony of Dr. Maeda, the relationship between his injury and his work.

The respondent argues claimant failed to prove that his injury is the result of an industrial accident. Contrary to the expressed intent of the legislature that the Workers Compensation Act is to be liberally construed to bring both employers and employees under its provisions, the respondent asks us to adopt a strict and limited definition of accident, which we decline to do. K.S.A. 1991 Supp. 44-508(d) defines "accident" as follows:

> "`Accident' means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment."

An accident can result from a single event or from a series of events which occur over time. Also, the event or events do not have to be traumatic or manifested by force. And an accident can occur as a result of employees doing their usual tasks in the usual manner. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374,573 P.2d 1036 (1978), and Downes v. IBP, *supra*. The Appeals Board finds claimant has established that he sustained a series of accidents while working for the respondent performing his usual duties which culminated in injury and disability on his last day of work on May 18, 1992. The Appeals Board bases this conclusion upon the uncontroverted testimony of Dr. Maeda that the leading cause of claimant's condition was his physical labor.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Floyd V. Palmer entered in this proceeding on June 1, 1995, should be, and hereby is, reversed and that this proceeding is remanded to the Administrative Law Judge for determination of the remaining issues.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Judy A. Pope, Topeka, Kansas
Michael C. Cavell, Topeka, Kansas
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director